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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LYDIA NOYOLA,) CASE NO.: 2:14-cv-00559-RFB-PAL
Plaintiff,)
v.)
J.C. PENNEY COMPANY, INC.; et al.,) **STIPULATION/JOINT MOTION FOR**
Defendants.) **LIMITED EXTENSION OF**
) **DISCOVERY DEADLINES (FIRST**
) **REQUEST)**

The above named parties, by and through their respective counsel of record, hereby move the court and submit the following STIPULATION/Joint MOTION FOR EXTENSION OF DISCOVERY DEADLINES (First Request), which arises from a July 29, 2012 incident where Linda Noyola (“plaintiff”) fell within the J.C. Penney salon, located at Meadows Mall, in Las Vegas, Nevada (“subject incident”).

A. DISCOVERY COMPLETED TO DATE

1. Parties conducted an initial rule 26(f) conference.
 2. Both parties served their respective initial disclosures within the permitted time allotted, and have subsequently served multiple supplemental disclosures thereto.
 3. Plaintiff amended her complaint to name Ms. Cleveland; defendants filed their answer.
 4. Parties entered into a confidentiality agreement and stipulated protective order regarding JCP's proprietary documentation.
 5. Parties conducted a site inspection, including the pedicure chair that is the subject of this case.
 6. On November 6, 2014, the parties served their initial expert witness disclosures.

- 1 7. On November 11, 2014, defendants' medical records review expert (Dr. Derek Duke)
 2 performed an independent medical examination of plaintiff because she underwent a serious
 3 lumbar fusion surgery with Dr. William Muir on November 14, 2014.
 4 8. On December 3, 2014, defense counsel deposed plaintiff regarding the subject incident and
 5 already procured medical records.
 6 9. On December 7, 2014, the parties served the appropriate rebuttal expert disclosures.
 7 10. JCP is still in the process of obtaining independent copies of plaintiff's medical records,
 8 especially pre-subject incident records from other jurisdictions.
 9 11. Throughout December, defense counsel's office continued their diligent efforts to obtain
 10 pertinent medical records; as well as secure deposition dates from corresponding medical
 11 providers and expert witnesses pursuant to the court's November 25, 2014 order (Doc. No.
 12 42).
 13 12. From December 19, 2014, through December 31, 2014, parties' counsel engaged in a series of
 14 meet-and-confer communications to discuss remaining deposition discovery and
 15 corresponding dates/ranges that might work for all parties involved, which includes
 16 considerable travel considerations.

17 **B. DISCOVERY THAT REMAINS TO BE COMPLETED**

18 Defendants believe they need to conduct the following depositions before discovery
 concludes:

<u>Deposition</u>	<u>Date</u>
JCP's FRCP 30(b)(6) corporate designee	January 9, 2015
Lessie Cleveland	January 9, 2015
Dr. William Muir (plaintiff's surgeon/expert)	January 13, 2015
Plaintiff (continued from 12/3/14)	Late January (target)
Dr. Sean Jebrailly (Virginia surgeon)	Late January/February 2015 (target)
Dr. Mudit Sharma (Virginia treatment provider)	Late January/February 2015 (target)
Dr. Sadia Masood (Virginia treatment provider)	Late January/February 2015 (target)

1 Dr. James Melisi (former Virginia surgeon that
 2 currently resides in New Mexico) February 2015 (target)

3 David Elliott (plaintiff's safety expert) February 12, 2015

4 In addition to the foregoing, defendants have learned there might be additional medical treatment
 5 providers, which plaintiff could have inadvertently omitted in her disclosures. Thus, defendants will
 6 likely need the requested time to complete procurement of those records and evaluate the same in
 7 their continued defense development for trial.

8 **C. REASONS WHY DISCOVERY HAS NOT BEEN COMPLETED/CANNOT BE
 9 COMPLETED WITHIN CURRENT DISCOVERY DEADLINES**

- 10 1. Defendants are in the process of obtaining new medical records that predated the subject
 11 incident, which also revealed new medical providers that treated plaintiff in another
 12 jurisdiction and before the subject incident.
- 13 2. Despite the defendants' diligent attempts to procure deposition dates and medical records
 14 from plaintiff's treatment providers from other jurisdictions, there were difficulties in
 15 obtaining the same due to various holiday schedule issues and the considerable distance
 16 between Las Vegas and plaintiff's pre-accident medical providers (out-of-jurisdiction). For
 17 instance, Dr. Melisi (one of plaintiff's pre-subject incident surgeons) closed his Virginia
 18 practice and is currently determining if he can still locate his prior records from his current
 19 New Mexico office practice.
- 20 3. The principal attorneys for both parties had trials scheduled to commence in the last sixty
 21 (60) days or in the next sixty (60) days, which made it difficult to properly coordinate
 22 schedules to conduct the necessary discovery before the current deadline.

23 **D. PROPOSED DISCOVERY SCHEDULE**

Initial Expert Disclosures:	Closed
Interim Status Report	Closed
Rebuttal Expert Disclosures:	Closed
Close of Discovery:	March 4, 2015 (primarily focusing on deposition discovery pursuant to referenced dates/ranges in section B)
Dispositive Motions:	April 3, 2015
Joint Pre-Trial Order:	May 4, 2015

The instant stipulation/joint motion and order is not being submitted at least twenty-one (21) days before the January 5, 2015 discovery disclosure deadline for all the reasons discussed above (e.g. meet-and-confer communications). Although the parties' intent was to honor and conduct discovery pursuant to the operative discovery deadlines, it is impossible for the parties to complete the same for purposes of sufficiently prosecuting—and defending—the pertinent claims/issues during trial. Defendants believe that the recent events (e.g. plaintiff's November 14, 2014 lumbar fusion surgery and the difficulties in obtaining pre-accident records/deposition dates from Virginian medical providers) have compelled defendants' need to conduct the foregoing depositions per the subsection B schedule. Plaintiff's counsel agrees with defendants' position regarding the need to conduct those depositions. Moreover, defendants believe that they would be unduly prejudiced if they were not permitted additional time (as requested) to conduct discovery (primarily depositions) as they would not be able to adequately defend plaintiff's claims at trial without being armed with all the necessary evidence.

Accordingly, the instant joint stipulation/motion to extend discovery is being submitted as soon as it became possible to do so, while attempting to comport with court order (Doc. No. 42). Indeed, defense counsel is willing to provide a sworn affidavit regarding the substance of this stipulation/joint motion should the court require the same.

DATED this 5th day of January 2015.

RICHARD HARRIS LAW FIRM

/s/ Jonathan R. Hicks
 Jonathan R. Hicks, Esq.
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 Attorneys for Plaintiff

DATED this 5th day of January 2015.

WILSON, ELSER, MOSKOWITZ,
 EDELMAN & DICKER LLP



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 Attorney for Defendants

IT IS SO ORDERED this 7th day of January, 2015.



 Peggy A. Leen
 United States Magistrate Judge

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2 CERTIFICATE OF SERVICE
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4 Pursuant to FRCP 5(b), I certify that I am an employee of WILSON, ELSER,
5 MOSKOWITZ, EDELMAN & DICKER LLP and that on this 5th day of January 2015, I
6 electronically filed and served a true and correct copy of the foregoing **STIPULATION/Joint**
7 **MOTION FOR LIMITED EXTENSION OF DISCOVERY DEADLINES (FIRST REQUEST)**
8 to be electronically transmitted to the Clerk of Court using the ECF System for filing. Based on the
9 records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the
10 following ECF registrants:
11

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